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August 16, 1993

Mr. William F. Canton
Secretary
Federal Communications Commission
Room 222
1919 M Street NW
Washington DC 20554

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AUG 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: In the Matter of Petition for Expediated Waiver of Section 64.1401(c)(1) of the Commission's Rules which Codifies the Virtual Collocation Tariffing Requirement Concerning Intrastate Arrangements; Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141; Pacific Bell Revisions to Tariff FCC No. 128, CC Docket No. 93-162, Transmittal Nos. 1613, 1630

Dear Mr. Canton,

Enclosed herewith for filing are the original and nine (9) copies of the MCI Telecommunications Corporation's Opposition To Expediated Waiver in the above referenced matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Petition furnished for such purpose and remit same to the bearer.

Yours truly,

Andrew L. Regitsky

Andrew L. Regitsky
Senior Manager
Regulatory Analysis

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Petition for Expedited Waiver of)	
Section 64.1401(c)(1) of the)	
Commission's Rules which Codifies)	
the Virtual Collocation Tariffing)	
Requirement Concerning Intrastate)	
Arrangements)	
)	
Expanded Interconnection with)	
Local Telephone Company Facilities)	CC Docket No. 91-141
)	
Pacific Bell Revisions to)	CC Docket No. 93-162
Tariff FCC No. 128)	Transmittals No. 1613, 1630

OPPOSITION TO EXPEDITED WAIVER

MCI Telecommunications Corporation ("MCI") hereby submits its opposition to the Petition for Expedited Waiver filed by Pacific Bell ("Pacific") on July 2, 1993, in the above-captioned proceeding. Specifically, Pacific seeks an expedited waiver of the requirement set forth in the Expanded Interconnection Order¹ that certain local exchange carriers ("LECs") provide virtual collocation arrangements for interstate services. Pacific contends that its extant intrastate virtual collocation arrangement is not the form of expanded interconnection that is subject to the federal tariffing requirement (Petition, p. 5); and that it would not be in the public interest to apply the

¹ Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992) (Expanded Interconnection Order), recon., 8 FCC Rcd 127 (1992) (Expanded Interconnection Modification Order), pets. for recon. pending.

federal tariffing requirement to its intrastate virtual collocation arrangement. (Id., p. 15)

I. Introduction

MCI urges the Commission to reject Pacific's expedited waiver request.² First, Pacific has petitioned for such a waiver despite the fact that the Commission clarified that it was carriers such as Pacific at whom the tariffing requirement was directed. Pacific offers no compelling arguments that distinguish it from other carriers to whom the requirement applies. The fact that Pacific's current virtual collocation arrangement does not replicate the form of other carriers' arrangements who were likewise ordered to tariff their arrangements in the interstate jurisdiction, is the result of Pacific's own failure to comply with earlier requests for configurations that better allowed for competition. Also, its contention that its ratepayers will be harmed and subject to unreasonable risk is unsubstantiated. Finally, Pacific fails to show how the federal tariffing requirement has any impact at all on the authority of the California Public Utility Commission ("PUC").

II. Pacific's Waiver Request is an Untimely and Inappropriate Response to the Commission's Expanded Interconnection Order.

In its Expanded Interconnection Order, the Commission exempted all but a few carriers from the requirement that they provide virtual, in addition to physical, collocation. That is, federal virtual collocation tariffs must be filed only if one of four

² A party seeking a waiver of a Commission requirement has "a heavy burden" to show that the general requirement, which embodies and reflects the public interest determination made by the Commission, should not be applied to it. WAIT Radio v. FCC, 459 F.2d 1203, 1207 (D.C. Cir. 1969).

specific criteria is met:³ (1) where virtual collocation is available on an intrastate basis, it must be available under federal tariff in all study areas⁴; (2) where a LEC has negotiated an interstate virtual collocation arrangement, it also must be available in all study areas⁵; (3) where space limitation in specific central offices prevents physical collocation, virtual collocation must be available under federal tariff in those study areas⁶; and (4) where state policy requires it.⁷ Pacific, by virtue of an individual case basis ("ICB") offering it has provided to Teleport in San Francisco, California, loses its exemption from the limited requirement that LECs offer federally tariffed virtual collocation in all study areas.

In its Expanded Interconnection Order, the Commission specifically identified Pacific as one of the LECs that was required to file an interim tariff within 30 days of the release date of the order.⁸ Not only did Pacific not file for reconsideration of this aspect of the order, but it subsequently withdrew its interim offering, in defiance of the Commission's directive. In an order released on June 9, 1993, the Commission reiterated that "Pacific should have tariffed virtual collocation because it has an

³ Although the Commission has apparently modified its criteria for virtual collocation requirements in Docket 91-141, at its August 1993 meeting, at the time of this filing, that Order on Reconsideration has not yet been released. MCI will respond to the apparent modifications when appropriate.

⁴ Expanded Interconnection Order, 7 FCC Rcd at 7490.

⁵ Id.

⁶ Id., at 7390, 7404-08.

⁷ Id., at 7391.

⁸ Id. at 7492, f.n. 612.

intrastate virtual collocation arrangement," and it ordered Pacific to "file a tariff offering virtual collocation to the same extent that it has tariffed physical collocation."⁹ MCI contends that had Pacific really believed that its intrastate virtual collocation arrangement was not the type of arrangement mandated by the Commission, it should have filed a petition for reconsideration of the Commission's Expanded Interconnection Order on a timely basis. Instead, Pacific, like the other LECs directed to file interim arrangements, met its directive without protest. It is only after realizing that it would have to file interstate virtual collocation arrangements on a study-area basis, that Pacific now suddenly determines that its intrastate arrangement is not actually collocation. This brazen untimely attempt to exempt itself from the mandate of the Commission and the needs of its customers, while typical for Pacific, should not be permitted by the Commission.

III. Pacific Fails to Show that there is Good Cause to Waive the Commission's Interim -- or Final -- Virtual Collocation Requirement.

Pacific argues that good cause exists for it to be exempt from this Commission requirement because its "particular, individualized intrastate virtual collocation arrangement is not the expanded interconnection form of virtual collocation addressed by the Commission's requirement."¹⁰ While the Commission envisioned the types of intrastate collocation arrangements that should be tariffed federally as those that are "sufficiently comparable in quality to physical collocation that interconnectors may

⁹ Pacific Bell Revisions to Tariff FCC No. 128, DA 93-657, June 9, 1993, para. 71 (Expanded Interconnection Tariffs Order).

¹⁰ Petition, p. 4.

choose virtual rather than physical collocation," Pacific goes to great length to describe how its intrastate offering is "special."¹² Pacific would have one believe that it provided an ICB arrangement with Teleport because Teleport requested a "special" - and, hence, non-tariffable -- configuration. That is, at a "unique location," Teleport required "more capacity than normal[]. . . [using] specific central office terminating equipment. . . over a specific type of facility with specific technical characteristics."¹³ Further, it explains that this exceptional arrangement "does not. . . expand Teleport's ability to compete. . . for channel termination all the way to a point of termination in our central office."¹⁴

Pacific asking for exemption from the Commission's order because of its "dearth of general value to competitors" can be likened to the child pleading for the mercy of the Court because, having murdered his parents, he is left an orphan. Teleport had previously attempted to obtain a more generic collocation arrangement, but Pacific "refus[ed] to interconnect with Teleport in a fashion which would permit Teleport to compete effectively with Pacific in the provision of CO-to-POP links."¹⁵

¹¹ Petition, p. 9, citing Expanded Interconnection Order, para. 40.

¹² Petition, p. 10.

¹³ Petition, pp. 10, 11. (Emphasis added)

¹⁴ Petition, p. 12.

¹⁵ Investigation on the Commission's own Motion into the Establishment of a Forum to Consider Rates, Rules, Practices and Policies of Pacific and GTE California Incorporated, I.90-02-047, Petition of the Teleport Communications Group to Require Pacific Bell to Modify Special Access Tariffs and Practices, before the Public Utilities Commission of the State of California, April, 16, 1990 ("Teleport Petition"), p. 3.

Teleport did not demand the "special" arrangement Pacific describes, but stated that it was "perfectly willing to utilize any reasonable alternative to this 'actual collocation' configuration, provided that it is economically and technically equivalent to actual collocation."¹⁶ Pacific has only itself to blame that its ICB service at issue in the instant proceeding lacks broader, more general value:

The refusal of Pacific to provide an effective connection arrangement for competitive CO-to-POP Links creates extremely significant limitations on the scope of the competitive market available to Teleport and other certificated intraLATA private line service providers, and undermines completely the basis upon which Pacific was granted price flexibility for the CO-to-POP Link in Phase I of ARF [Alternative Regulatory Framework proceeding].¹⁷

Its failure to initially respond to the pro-competitive requests of Teleport should not now excuse it from compliance with a Commission mandate that is intended to further the goals of competition in the interstate market.

Nor is Pacific unique among the other carriers whom the Commission decreed would provide interstate virtual collocation tariffs,¹⁸ as required when a carrier seeks a waiver. Had the concerns that Pacific now proffers been substantive or significant, either the Commission would have addressed them, these other carriers would have raised them, or Pacific would have filed for reconsideration of the Expanded

¹⁶ Petition, pp. 4,5.

¹⁷ Petition, p. 11.

¹⁸ The Commission subjected the following carriers to the same requirement to which Pacific Bell singularly objects: Central Telephone of Illinois, Illinois Bell Telephone, New England Telephone and Telegraph Co., New York Telephone Co., Rochester Telephone Co., and possibly Bell Telephone Co. of Pennsylvania. (Expanded Interconnection Order, 7492, f.n. 612)

Interconnection Order. Pacific does not clarify why it alone will be faced with an "increase[d] risk that certain of its costs of providing physical collocation will not be recovered from physical collocators."¹⁹ Nor, in fact, does it ever attempt to quantify any of these stranded costs.

More importantly, Pacific is making arguments on both sides of the debate. On the one hand, it states that if "the demand for collocation in a central office may be spread between physical and virtual collocation, the physical collocation infrastructure may be under utilized."²⁰ On the other, it contends that it does not expect customers to purchase its virtual collocation service.²¹ Its primary argument -- that the unquantified cost of preparing for demand that it does not think will materialize will harm customers -- does not withstand scrutiny. Clearly, Pacific simply is continuing to balk at providing the types of collocation to its monopoly network that its potential customers really need, and the Commission should recognize the disingenuousness of its protests.

III. Pacific's Compliance with Federal Tariffing Requirements Will Not Deprive the California Public Utility Commission of Its Power.

Finally, Pacific argues that the "California PUC's ability to determine expanded interconnection issues in its proceedings will be frustrated if the federal tariffing requirement is now applied to [its] intrastate virtual collocation arrangement."²² The

¹⁹ Petition, p. 20.

²⁰ Petition, p. 21.

²¹ Petition, p. 20.

²² Petition, p. 17.

Commission makes it clear, however, that this is not the intent nor the result of its actions.

The Expanded Interconnection Order solely governs the collocation architecture for expanded interconnection for interstate special access services, in which the states have a limited interest under our system of dual federal/state regulation. . Although the Expanded Interconnection Order may have indirect effects on the states, such effects do not turn legitimate federal regulation of interstate services into preemption of state regulation. The states are free to adopt, or not to adopt, expanded interconnection for intrastate special access.²³

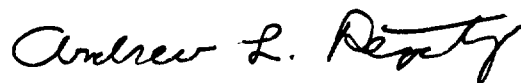
²³ Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion And Order. Released June 9, 1993, at para. 13.

IV. Conclusion

The Commission should reject Pacific's Petition for Expedited Waiver of the virtual collocation requirement. Pacific has not satisfied the applicable legal standard in terms of justifying its escape from the Commission's requirement that it provide virtual collocation arrangements for interstate special access services.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION



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August 16, 1993

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August 16, 1993.

Andrew L. Regitsky

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CERTIFICATE OF SERVICE

I, Carolyn McTaw, do hereby certify that copies of the foregoing MCI petition were sent via first class mail, postage paid, to the following on this 16th day of August, 1993:

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